troversies. WORKMEN'S COMPENSATION ACT, § 23. And there was no litigation before the Commission. So neither an advisory opinion nor a binding decision could be given by the Appellate Division on the question certified. This case, however, raises an interesting point. If an advisory opinion were given in pursuance of a constitutional provision, could that opinion be reviewed by a higher court? Such opinions are generally given without a hearing and without the aid of research and argument by counsel. However, if the advisory opinions are rendered after the filing of briefs by *amici curiae*, as in the principal case, they might have some judicial authority and so be reviewable. The only objection is that there is no judicial proceeding between parties litigant which the ultimate court is asked to review. See H. A. DUBUQUE, "The Duty of Judges as Constitutional Advisers," 24 AM. L. REV. 369 *et seq.*, for a valuable historical discussion of advisory opinions.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — CHILD LABOR LAW. — The federal Child Labor Law prohibits the transportation by interstate commerce of certain products of child labor. ACT SEPT. 1, 1916, 39 STAT. 675, c. 432 (COMP. STAT. 1916, §§ 8819 a–8819 f). A bill to enjoin threatened prosecutions of children was brought by their father, who alleged that the act is not a regulation of interstate and foreign commerce and that it contravenes the Fifth and Tenth Amendments to the Constitution. In support of the act the District Attorney relied upon the commerce clause of the Constitution. *Held*, the act is unconstitutional and the order allowing an injunction is affirmed. *Hammer* v. *Dagenhart*, 38 Sup. Ct. R. 529.

For a discussion of this case, see the article by Thurlow M. Gordon, "The Child Labor Law Case," p. 45.

CONSTITUTIONAL LAW — STATE AND FEDERAL JURISDICTION — MILITARY NECESSITY. — A man in the naval service of the United States while acting under orders from a competent authority to proceed with dispatch broke the speed laws of the state. *Held*, that state laws regulating speed upon the highways are subordinate to exigencies of military operations in cases where military necessity exists. *State* v. *Burton*, 103 Atl. 962 (R. I.).

The activities of the navy are within the control of the federal government. U. S. CONST., Art. I, § 8, ¶ 14. Unless clearly illegal on its face the order of a superior officer protects the subordinate. *United States* v. *Clark*, 31 Fed. 710. But it is not *per se* a justification nor is he removed from the jurisdiction of the civil authorities. *Mitchell* v. *Harmony*, 13 How. (U. S.) 115; *Dow* v. *Johnson*, 100 U. S. 158. Control of vehicles upon the highway falls within the police power of the state. *State* v. *Swagerty*, 203 Mo. 517, 102 S. W. 483. But the state cannot interfere with the due exercise of the federal authority. *McCulloch* v. *Maryland*, 4 Wheat. (U. S.) 316. Within its sphere the federal government transcends the police power of the state. *Ohio* v. *Thomas*, 173 U. S. 276. The necessities of war will justify a "private mischief." *Commonwealth of Pa.* v. *Sparhawk*, 1 Dall. (U. S.) 357. Winning the war is paramount to any rules for personal safety. But courts, even when recognizing federal superiority and the right of military authorities in case of military necessity to interfere with private rights, jealously guard their prerogative of judging whether there is such an emergency. *Philadelphia Company* v. *Stimson*, 223 U. S. 603, and cases cited.

CONTRACTS — DEFENSES — PUBLIC POLICY AS A DEFENSE FOR NON-PERFORMANCE. — The defendant refused to perform his part of a contract for a baby show on account of an epidemic of infantile paralysis. *Held*, the defendant was, as a matter of public policy, excused from performance. *Hanford* v. *Conn. Fair Ass'n, Inc.*, 103 Atl. 888 (Conn.).

Mere impossibility never excuses performance of a contract, but unforeseen difficulties of performance due to domestic law, destruction of the specific subject matter of the contract, or to the death or illness of a party are sometimes defenses. 15 HARV. L. REV. 63. These defenses are equitable; if the parties had contemplated the particular contingency, they would have agreed that the contract should be justly modified or terminated thereby. See WALD'S POLLOCK ON CONTRACTS, 525, 536, 543. See also 15 HARV. L. REV. 418; 19 HARV. L. REV. 462. Reasonable fear of bodily harm arising subsequently to the making of the contract also excuses a party from performance. *Lakeman* v. *Pollard*, 43 Me. 463; *Walsh* v. *Fisher*, 102 Wis. 172, 78 N. W. 437; *Sibbery* v. *Connelly*, 22 L. T. R. 174. In a contract that is against public policy, however, the law denies recovery because the tendency of the contract was bad from the outset. *Judd* v. *Harrington*, 139 N. Y. 105, 34 N. E. 790; *Egerton* v. *Brownlow*, 4 H. L. 1. Obviously one who contracts to hold a baby show does no wrong thereby. In the principal case the court should not excuse performance on the ground of a demand by public policy, but because the parties, if they had contemplated the epidemic, would have agreed that such a happening would justly terminate the contract.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO THE CONTRACT — SOLE BENEFICIARY. — The deceased drew up his wife's will. She expressed her dissatisfaction with it in that the plaintiff, her niece, was not amply provided for by it. He promised thereupon that if she would sign the will as it stood, he would leave the plaintiff enough in his testament to make up the difference, and the wife accordingly executed the instrument. Thereafter, when the deceased came to die, it was discovered that his will provided in no way for the plaintiff. *Held*, that she could recover on the promise. *Seaver* v. *Ransom*, Ct. App. (N. Y.) October 1, 1918.

On a contract for the sole benefit of a third party the promisee may not recover more than nominal damages for the promisor's breach. *Burbank* v. *Gould*, 15 Me. 118; *Watson* v. *Kendall*, 20 Wend. 201; *Adams* v. *Union R. R. Co.*, 21 R. I. 134, 137. Justice, therefore, demands that the beneficiary recover, since he alone suffers damage, and the promisor, otherwise, is permitted to retain valuable consideration, given for a promise never performed. The New York courts have been prevented from reaching this conclusion because of the rule laid down by former decisions, limiting the right of action by a beneficiary to cases, where the promisee owed him some duty. *Vrooman* v. *Turner*, 69 N. Y. 280, 283; *Lorillard* v. *Clyde*, 122 N. Y. 498, 25 N. E. 292; *Sullivan* v. *Sullivan*, 161 N. Y. 554, 56 N. E. 116. See 15 HARV. L. REV. 780–82. But to prevent injustice to some extent, the courts went to the length of declaring that a moral duty was sufficient to sustain such an action. *Buchanan* v. *Tilden*, 158 N. Y. 109, 52 N. E. 724; *Matter of Kidd*, 188 N. Y. 274, 80 N. E. 924; *De Cicco* v. *Schweizer*, 221 N. Y. 431, 117 N. E. 807. The principal case refuses to invoke such an absurdity. It virtually permits recovery by any sole beneficiary and disregards completely the restriction imposed by former cases.

DAMAGES — NATURE AND ELEMENTS — COMPOUND INTEREST. — At a partnership settlement the defendant failed to disclose his ownership of certain stocks which were to be shared by the partners. The Supreme Court of Massachusetts awarded damages, with interest from the date of settlement to the date of the bill; and the case was recommitted to the master to ascertain the value of the stock, but the terms of the decree were to be settled before a single justice, who reported the case to the full court on the question whether compound interest may be computed from the date of settlement to the date of filing the bill, with a rest as of the date of filing the bill and interest there-